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NO. 82-1093

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

LUKE WILLIAM ABLE, JR., Etc.
Appellants-Petitioners

v.

THE STATE OF TEXAS, Et al.
Appellees-Respondents

MOTION TO DISMISS OR AFFIRM

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Appellant Luke William Able, Jr., is an attorney. He practices in the law field of criminal defense. The Texas Legislature in 1973 enacted a law licensing and regulating bail bondsmen, Article 2372p-3, Vernon's Texas Civil Statutes. The statute was amended in 1975 and again in 1979. At issue is the statute as amended in 1979. (App. D). The Act permitted only a licensed bondsman to make a bail bond, with some exceptions, among them being an exception for a licensed practicing attorney to make a

bail bond for a person whom he actually represents in a criminal case. Section 15(d) of the Act prohibited anyone advertising as a bondsman unless he held a valid license under the Act. The attorney did not hold a license under the Act, as he was allowed to make bail bonds for his clients under an exception to the Act. However, he did advertise that he could make bail bonds—advertising that the Act itself limited only to those who were licensed bondsmen. Section 4 of the Act authorized the Sheriff to refuse to accept a bail bond if, in the exercise of his discretion, he is satisfied that the provisions of the Act have been violated. The Sheriff notified the attorney that he would accept no further bail bonds from him unless he qualified as a licensed bail bondsman. At the hearing on the attorney's application for a temporary injunction Captain Gaines testified that in a meeting with the attorney the Sheriff had offered to allow the attorney to continue making bonds for his own clients if he would discontinue the telephone number listed in the advertisements and subscribe to a new telephone number without having his advertised calls forwarded to him. This offer was not accepted.

The Trial Court denied a temporary injunction. (App. B). The attorney appealed to the Court of Appeals of Texas. After the judgment of the Trial Court and prior to the hearing in the Court of Appeals, a Legislative amendment of Article 2372p-3 in its entirety became effective on August 31, 1981. Chapter 312, Acts of the 67th Legislature, 1981, page 875. This was urged as mooting the attorney's appeal, as the statute under which the suit was brought had been abrogated prior to any hearing on the merits. The Court of Appeals rejected

that argument in its footnote 1 (App. A-2), but considered the appeal and affirmed the denial of the temporary injunction on the merits. The attorney then appealed to the Supreme Court of Texas, which dismissed the appeal for want of jurisdiction. (App. C-3). See Rule 483, Texas Rules of Civil Procedure.

Now, the attorney's appeal pends in this Court. The appellees move to dismiss the appeal, or, alternatively, to affirm the three State Courts. It is apparent that the appeal is from the denial of a temporary injunction. The hearing on the merits of granting a permanent injunction is still pending in the Trial Court. The amendment of the Bail Bond Act became effective after the interim hearing in the Trial Court. When the case is heard and determined on its merits, it is possible and probable that no constitutional objections will be still available to the attorney. The attorney seeks injunctive relief from a State statute that no longer exists. The State Courts have not yet held a hearing of the statute now on the books. If the constitutionality of the existing statute is unresolved after a full trial on the merits, then the way to the Supreme Court will be open. The decision by this Court construing a statute that passed out of existence would not be in the best interests of the nation's jurisprudence. If the Court adopts the practice of accepting appeals of interim orders from lower Courts, the burden of the Court will increase materially, unnecessarily. It is in the best interests of justice that this appeal be dismissed as premature.

WHEREFORE, appellees pray the Court to dismiss the appeal, or alternatively, to affirm the State Courts, at appellant's cost.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on this 8th day of March, 1983, I served three copies of the Motion to Dismiss or Affirm on Patricia Small Burroughs, Esq., counsel of record for Appellant, by depositing the document in a United States mailbox, with first class postage prepaid, addressed to said counsel at her post office address, 7303 Hillcroft, Suite 53, Houston, Texas 77081.

Billy E. Lee

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